DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

McKENNEY v. PEERS, CLERK.—Decided at Wytheville, July —, 1895.

1. ELECTIONS—*Powers and duties of commissioners—returns—mandamus.* The powers and duties of commissioners of election, as prescribed by sections 133, 134, 135, 136 and 137 of the Code, are to ascertain the result from the face of the returns if regular, and if not regular to cause the irregularity to be corrected as required by the statute, and then to ascertain the result from the returns as corrected. When the result has been thus ascertained and signed by the requisite number of commissioners, and attested by the clerk, and had an abstract of the votes cast thereto annexed, the duties of the commissioners cease and determine when the returns required by the statute have been made, and the result ascertained in the manner prescribed by law, the commissioners cannot go behind the returns and throw out a precinct; and if they do, the clerk may be compelled, *by mandamus*, to award the certificate of election to the person previously ascertained to have been elected.

WARD'S ADM'R AND OTHERS v. CORNETT AND OTHERS.—Decided at Wytheville, July 11, 1895.

1. USURY—*Penalty—above legal rate after maturity.* A bond payable more than two years after date without interest till maturity, but with interest at eight *per cent. per annum* after maturity is not usurious on its face. The excess above the legal rate is regarded as a penalty and not as usury. A deed of trust to secure such bond, given after its maturity, and extending the time of payment thereof, is not usurious, but furnishes security for the bond and only legal interest thereon until paid.

2. USURY—*Quasi penal offense—proof to establish.* A debt to be usurious must be so in the beginning. It cannot be made so by subsequent events. Where the debtor, by punctual payment of the debt, may relieve himself of the illegal interest stipulated, it is not usury. Usury is a *quasi* penal offense, and, to avail as a defense, must be established beyond a reasonable doubt.

3. USURY—*Bill to discover—effect of answer.* Where the debtor calls on the creditor to answer under oath and discover usury, when responsive to the bill, must be accepted as true in the absence of other evidence sufficient to overcome such answer.

FISHBURN AND OTHERS v. ENGLEDOVE.—Decided at Wytheville, June 27, 1895.

1. JUDGMENTS—*Evidence.* In order that a judgment may be evidence against

a party in another suit on a different cause of action it must be rendered in a proceeding between the same parties or their privies, and the point must have been involved in both suits and determined on its merits.

2. JUDGMENTS—*Evidence—distress warrant—unlawful detainer.* Where rent is payable by the month, and a distress warrant is sued out for rent in arrear, and three months before and two months after suing out such warrant, actions of unlawful detainer are sued out by the landlord against the tenant to recover possession of the leased premises, and there is judgment in both in favor of the defendant, these judgments, although between the same parties, are not evidence that no rent was due at the time the distress warrant was sued out.

3. LANDLORD AND TENANT—*Unlawful distress—measure of damages.* In an action, under section 2898 of the Code, to recover damages for distraining property for rent not due, in the absence of any charge of fraud, malice, oppression or other special aggravation, the measure of the plaintiff's damages is compensation of the injury suffered—such damages as are the natural and proximate result of the injury complained of.

4. INSTRUCTIONS—*Conflicting evidence.* Where the evidence is conflicting the court, upon request, should give instructions which correctly propound the law according to the different views which the jury may take of the evidence.

5. LANDLORD AND AGENT—*Unlawful distress by agent—liability of landlord.* A landlord who employs an agent to lease his property and receive the rents is not liable in damages for the act of the agent in unlawfully suing out a distress warrant against the tenant, unless he directed or approved the proceedings had under the distress warrant, or failed to repudiate such proceedings after full knowledge of them.

6. INSTRUCTIONS—*Weight of evidence.* In an action to recover for loss of profits in business, where the plea is not guilty, an instruction which assumes that there has been such loss, or which is ambiguous on this point should not be given.

7. PLEADING—*Several defendants—separate pleas—general verdict for plaintiff.* In an action of tort against several defendants for an alleged joint trespass, although they severally plead not guilty, there is but one issue submitted to the jury, and a general finding in favor of the plaintiff, without naming the defendants, is a finding against all the defendants.

8. PRINCIPAL AND AGENT—*Special powers—exceeding authority of principal.* An authority from a landlord to an agent to receive tenants for his property, "receive rents" and pay for repairs and insurance, does not authorize an agent to sue out a distress warrant for rent in arrear, and levy it on the property of the tenant.

SHIPMAN v. FLETCHER.—Decided at Wytheville, June 13, 1895.

1. CHANCERY PRACTICE—*Commissioners in chancery.* Commissioners in chancery are appointed to assist the court, not to supplant it, and their entire work is always subject to revision by the court, or the judge in vacation While a court of equity may avail itself of the aid of its commissioners, it cannot abdicate its authority or powers, nor surrender to any one the performance of its judicial functions.